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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/013,107	12/07/2001	Wayne M. Wagner	758.1231US01	9461

7590 10/07/2003  
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EXAMINER

HEWITT, JAMES M

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/013,107

Applicant(s)

WAGNER ET AL.

Examiner

James M Hewitt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claims 24, 25-26 and 28 are objected to because of the following informalities:

In claim 24 line 3, it is apparent that the second instance of "second" should be replaced with "third".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 10, 12 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Morris (US 2,227,551).

With respect to claim 1, Morris discloses a pipe clamp comprising: a strap (33) adapted to surround a pipe, the strap including first and second opposing ends separated by a gap; a fastener (30/31) that extends across the gap for tightening or loosening the clamp by narrowing or widening the gap between the first and second opposing ends of the strap; the first opposing end including at least one projection (36); and the second opposing end defining at least one recess (37) for receiving the projection when the clamp is tightened.

With respect to claim 2, wherein the first opposing end includes two projections, and the second opposing end includes two recesses.

With respect to claim 3, wherein the projections include truncated triangular shapes.

With respect to claim 6, wherein the strap includes metal.

With respect to claim 10, Morris discloses a pipe clamp comprising: a strap (33) adapted to surround a pipe, the strap including first and second opposing ends separated by a gap; a fastener (30/31) that extends across the gap for tightening or loosening the clamp by narrowing or widening the gap between the first and second opposing ends of the strap; the first opposing end including a first portion (36); and the second opposing end including a second portion (37); and the first and second portions being configured to extend circumferentially past one another when the clamp is tightened while remaining substantially within a cylindrical boundary defined by a wall thickness of the strap.

With respect to claim 12, wherein the strap includes metal.

With respect to claim 23, wherein at least one projection has a truncated triangular shape.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 4, 7-9 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 2,227,551).

With respect to claim 4, the Examiner takes Official Notice of the use of a pipe clamp having an increased diameter portion and a reduced diameter portion separated from the increased diameter portion by a step.

With respect to claims 7 and 13, Morris fails to explicitly state that the metal he uses for the strap is stainless steel or aluminum. Nevertheless, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ stainless steel or aluminum as the metal for the strap, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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With respect to claims 8 and 14, while Morris does not provide specific dimensions for his device, it would have been obvious to one having ordinary skill in the art at the time the invention was made form the strap of a width less than 2 inches, because limitations relating to the size of a device do not serve to patentably distinguish. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

With respect to claims 9 and 15, Morris teaches of the limitations of the claim except that the wall thickness of the strap is between 0.065 to 0.105 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the strap with a thickness in the given range since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claims 5, 11, 16-22 and 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 2,227,551) in view of Wagner et al (US 4,558,891).

With respect to claims 5, 11 and 16, Morris teaches all the limitations of these claims (as described in the rejections of claims 1 and 6) except that the fastener includes a bolt having a base end and a threaded end, wherein the clamp includes a sleeve connected to the second opposing end of the strap, wherein the base end of the bolt is connected to the first opposing end of the strap, and wherein the threaded end of the bolt extends through the sleeve. Wagner teaches a pipe clamp having a fastener that includes a bolt (31) having a base end (48) and a threaded end (52), wherein the

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clamp includes a sleeve (50) connected to the second opposing end (44) of the strap, wherein the base end of the bolt is connected to the first opposing end (42) of the strap, and wherein the threaded end of the bolt extends through the sleeve. In view of Wagner's teaching, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Morris' fastening assembly in order to improve the effectiveness of the clamp and joint (see Wagner: col. 4 line 57 – col. 5 line 7).

With respect to claim 17, wherein the first and second opposing ends include circumferential teeth.

With respect to claim 18, while Morris does not provide specific dimensions for his device, it would have been obvious to one having ordinary skill in the art at the time the invention was made form the strap of a width less than 2 inches, because limitations relating to the size of a device do not serve to patentably distinguish. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

With respect to claim 19, Morris teaches of the limitations of the claim except that the wall thickness of the strap is between 0.065 to 0.105 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the strap with a thickness in the given range since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claim 20, Morris fails to explicitly state that the metal he uses for the strap is stainless steel or aluminum. Nevertheless, it would have been obvious to

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one having ordinary skill in the art at the time the invention was made to employ stainless steel or aluminum as the metal for the strap, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With respect to claim 21, wherein the first opposing end includes two projections, and the second opposing end includes two recesses.

With respect to claim 22, wherein the projections include truncated triangular shapes.

With respect to claim 24, Morris discloses that one of the first and second ends of the strap includes first, second and third projections, the second projection being positioned beneath the bolt and the first and third projections being positioned on opposite sides of the bolt (see primary or middle bolt '30' in Figure 1 of Morris); and the other of the first and second ends including first second and third recesses for respectively receiving the first, second and third projections when the clamp is tightened.

With respect to claim 25, Morris teaches of the limitations of the claim except that the wall thickness of the strap is between 0.065 to 0.105 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the strap with a thickness in the given range since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.



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With respect to claim 26 and with reference to Morris, the first, second and third projections are located at the first end of the strap, and the first, second and third recesses are located at the second end of the strap.


With respect o claims 27 and 28 and with reference to Wagner, the bolt is curved.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M Hewitt whose telephone number is 703-305-0552. The examiner can normally be reached on M-F, 930am-600pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on 703-308-1159. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



James M. Hewitt  
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